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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 697

UNITED FUEL COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY TO BRIEF OF THE UNITED STATES IN OPPOSITION

WM. L. DONNER
One Farragut Square South
Washington 6, D.C.
Attorney for Petitioner

ALAN F. WESTON
ERNEST H. LANE
JOSEPH F. MATTHEWS, JR.
Of Counsel

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STATEMENT

The Government's brief in opposition to the granting of a writ of certiorari oversimplifies and obscures the importance of the questions presented by petitioner in the following particulars:

(1) On page 2, limits its question presented to the single issue of law as to whether the rates of compensation fixed by the Postmaster General for transporta-

tion of the mails by steamship to foreign ports under Title 39, United States Code, Section 654(a) "included payment for the elements of bag weight and cartage, as well as for the carriage of the net contents." (Pet. App. 57a-58a.)

(2) In summarizing (pp. 3-4) petitioner's letter of June 16, 1950, to the Assistant Postmaster General (Finding 19, Pet. App. 16a, 44a-48a) omits the material and relevant fact that petitioner served notice that on and after October 1, 1950, mails tendered by United States postal authorities will be accepted and transported on condition that compensation for the transportation of the mails tendered will be computed upon the gross weights (including sacks) of mails so tendered and transported; also omits petitioner's statement that "the foregoing will apply to all so-called Convention mails, for which your administration is obligated to transport under the free transit provisions of the Convention of the Americas and Spain." (Finding 19; Pet. App. 44a-46a).

(3) The summarization (p. 4) of the Department's letter of July 14, 1950, in reply to petitioner's letter of June 16, 1950, conveys an incorrect impression as to what was contained in that letter. Petitioner sub-

[1] Article 3 of the Convention of the Americas and Spain signed at Rio de Janeiro September 25, 1946, effective January 1, 1947, provided that

> The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories, and to convey by the ships of their registry or flag, without any charge whatsoever to the countries, all correspondence which the latter send to any destination. (Treaties and Other International Acts Series 1680, Dept. of State.)

mits that the two letters as set forth in Findings 19 and 20 should be read together. (Pet. App. 44a-48a).

(4) Finally, the Government argument minimizes (pp. 8-9) the importance of petitioner's questions presented (Pet. 3-4), involving the conflict in the interpretation of provisions of the Postal Union Conventions of Paris 1947 and Brussels 1952 by the Postmaster General and the Court of Claims of an undisclosed limitation on the rates per pound specified in Section 120.7(3)(b) of the Postal Regulations 1948. (Pet. App. 28a, 57a).

PETITIONER'S REPLY

Petitioner again asserts that the Department's letter of July 14, 1950 (Finding 20, Pet. App. 16a, 46a) attempted to justify its practice not to pay compensation for sacks enclosing the mails or for the empty sacks by Articles 153 and 161 of the Paris Convention, which govern settlement of accounts between countries for territorial and maritime transit performed by one country for another; the practice was not based

[1] After the controversy arose growing out of Petitioner's letter of June 16, 1950 and the Department's reply of July 14, 1950 (Pet. App. 16a-19a) and subsequent to the Brussels Convention, self serving declarations were made as to intention of the rates to be promulgated following the Brussels Convention of 1952 (See Court of Claims Finding 27, Pet. App. 51a-53a) which was substituted for the Commissioner's Finding 27 (Pet. App. 22a). In its motion for rehearing, petitioner excepted to the Court's Finding 27 on the ground that petitioner's position with respect to the new rates was not wholly presented. The Court's attention was invited to Petitioner's requested findings submitted to the Commissioner and urged the Court to amend its Finding 27 by including four other letters on the subject in their entirety, viz. Gov't. Exhibits 14A, 14B and 14C. (Motion for Rehearing and Brief, pp. 18-19).

on any undisclosed intention that the rates fixed in Section 120.7(3)(b) (Pet. App. 28a, 57a) included compensation for the sacks or cartage from post offices to piers.

Articles 153 and 161 of the Paris Convention, do not apply to any mails *except foreign closed transit mails, i.e.*, letters and print mails, which are subject to transit charges. This excludes parcel post and any mails not subject to transit charges for the benefit of the transporting country. Yet it was these provisions of limited application which the United States Post Office Department relied upon in its letter of July 14, 1950, justifying its practice with respect to all mails to deduct the weights of sacks, including sacks containing parcel post and weights of all empty sacks including empty parcel post sacks. (Witness Greever Allan, Tr. 411-415).

The Government's reply in opposition to the writ of certiorari, completely misses the point of petitioner's basis for requesting the writ when it says (p. 9) that "petitioner is merely restating its argument that the traditional ocean mail system is wrong and that the accepted compensation scheme is unfair. But . . . the method of its measurement is not for the Court of Claims to decide in a suit such as this," and in addition to citing the case of *United Fruit Co.* v. *United States*, 144 Ct. Cls. 154, 158 (Pet. App. 1a-5a) calls attention to the case of *United States* v. *Jones*, 336 U.S. 641. The Government urged this case in the court below as a bar to the court's jurisdiction. Petitioner pointed out to the Court of Claims that the award of compensation in the cases at bar does not require that court to raise, increase, or consider the highly complicated factors which determine whether a given rate is reason-

able or not, as was involved in the *Jones* case; also that in the cases at bar empty mail sacks were dispatched as mail, that the mails were in bags sealed by the post office against inspection and that the rates fixed by the Postmaster General should be paid on the total weights of that tendered as mail matter.

At the risk of repetition, petitioner emphasizes that the ancient or traditional system was, and still is, rooted to R.S. 4009, which authorized compensation on the basis of postage affixed to mail transported. This ancient basis took no note of weights of mail or weights of sacks—only of the postage affixed. The *postage basis of compensation* authorized in R.S. 4009 was changed by the Acts of July 3, 1926 and February 14, 1929, (39 USC § 654(a)) to a *rate base of compensation for weights* of mail transported.[3] Also, the Act of February 6, 1929, made it compulsory for any steamship to transport mails tendered by the Postmaster General (18 USC § 1724; Pet. App. 60a) and the Department's letter of July 14, 1950, to petitioner served notice on petitioner that for refusal to accept mails tendered, clearance of its vessels may be withheld until the mails are accepted or the clearance officer is advised by the Postmaster General that the mails have been accepted or their transportation is no longer required. Petitioner being thus compelled to accept

[3] The Government's reply in footnote on page 4 cites as authority for the ancient practice inter-office opinions of the law officers of the Department, viz., the Assistant Attorney General for the Post Office Department, rendered in 1882 and 1889. All citations in the footnote were prior to the amendments of R.S. 4009 by the Act of February 14, 1929 (39 USC 654(a)). The reference to Def. Exhibit 19, Manual Foreign Distribution Scheme of the New York Post Office only gave tare weights of sacks—nothing as to basis of compensation.

the mail tendered submits that it is entitled to compensation as claimed.

CONCLUSION

The Court is again urged to grant the petition for a writ of certiorari to the Court of Claims.

Respectfully submitted,

WM. I. DENNING
One Farragut Square South
Washington 6, D. C.
Counsel for Petitioner

ALAN F. WOHLSTETTER
ERNEST H. LAND
JOSEPH F. MULLINS, JR.
Of Counsel

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